IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7044 OF 2005

Prakash Yeshwant Wadekar . .. Petitioner.

vs.

Dattatraya Shivram

Bhujbal & Ors. .. Respondents.

Mr. Dilip Bodake for petitioner.

Mr. Vilas B. Tapkar for respondent no.1.

CORAM : S.U. KAMDAR, J.

DATE : 23rd November, 2005.

P.C.:

. By the present petition, the petitioner is challenging the order passed on Exhibit-13 in Election Petition No. 1 of 2005 dated 4.10.2005. The only ground of challenge is that the trial Court has permitted counting of the votes on the application of respondent no. 1 without leading any oral evidence. In support of the said contention he has relied upon the judgement of this Court in the case of Bhagwat s/o Vithoba More vs. Civil Judge, Jr. Divn. & Ors., reported in 2003(1) ALL MR 13 and another judgment of this Court in the case of

Sheshrao Nivrati Surwase vs. Nikenth Jyotiba Gaikwad & Ors., reported in 2003 (6) Bom. C. R. 784. In light of the aforesaid judgments of this Court, it is clear that the order on Exhibit-13 can be passed only after the respondent no. 1 leads oral evidence in support of his contention raised in the application for recounting of the votes. In that view of the matter, the order dated 4.10.2005 is set aside. The learned trial Judge is directed to conduct evidence of the respondent no. 1 in support of his application at Exhibit-13 and thereafter pass an appropriate order for the purpose of recounting of the votes. The trial Court is directed to conclude the evidence on or before 31.12.2005 subject to the respondent no. 1 cooperating in the matter. Petition disposed of accordingly. No order as to costs.